EXHIBIT A

ALLEGED FALSE AND MISLEADING STATEMENTS CITED IN COMPLAINT

"Our objective is to become the leading provider of enterprise Web solutions that offer global businesses the ability to improve collaboration, workflow and business relationships by delivering a powerful combination of technology, software, services and managed applications capabilities. As the flow of information becomes more liberated and more complex, we believe that a new type of solution provider is required to unite all of the skills and emerging technologies needed to create advance enterprise Web solutions that position companies to go beyond the processing of transactions and operate at the leading edge of their industries. In order to achieve this objective, we have adopted the following key elements of our strategy:

- *Become a recognized leader in advanced enterprise solutions.* We currently have over 500 customers consisting of predominantly Global 2000 companies and high-growth middle-market companies. These customers are serviced by one or more of our four principal business units. By expanding our relationships with these customers, we can enhance our reputation and visibility and capitalize on cross-selling opportunities with their customers, suppliers, partners and distributors.
- *Develop, acquire and integrate offerings and solutions.* We plan to focus on the development, acquisition and integration of components that can be combined to form a powerful set of services, technology and hosting capabilities that can advance and extend our customers' businesses to include external and internal business communities.
- *Target a specific customer base.* We plan to target customers whom we believe can benefit most readily from greater collaboration, more efficient workflow and better management of business relationships between their customers, employees, partners, suppliers, prospects and sources of information. We believe that these customers are primarily concentrated in information-intensive businesses such as the financial services, insurance, energy, pharmaceutical, biotechnology and telecommunications industries.
- *Support and complement our solutions through alliances with business partners.* We intend to establish strategic alliances with a number of companies like our strategic alliance with Computer Associates International, Inc. ("CA"), which is also one of our strategic investors. CA's professional expertise enhances the range and quality of our Professional Services and CA's Jasmineii Portal Software is a key component of our Enterprise Solutions Portal. We believe that strategic alliances will enable us to improve our ability to attract and retain customers who prefer to deal with larger, more stable solutions providers, provide additional channels for our products, and enable us to build industry-specific solutions for our customers.
- *Position divine as a technology owner and solutions integrator.* We plan to differentiate divine from other solutions delivery organizations by positioning divine as a technology owner and solutions integrator. We intend to gain a strategic advantage by acquiring and developing innovative technologies and making these part of our broader solutions in order to leverage their full potential.

<u>Complaint</u>, ¶¶ 30, 33, 36, 45, 106, 114; <u>Appendix</u>, Ex. 2, pp. 25, 45 (RoweCom prospectus), Ex. 3, pp. 32, 54 (eShare prospectus), Ex. 4, pp. 25, 45 (Eprise prospectus), Ex. 6, pp. 26, 49 (Data Return prospectus), Ex. 17, pp. iii, 3 (Delano prospectus), Ex. 19; pp. 29, 47 (Viant prospectus) [exhibits attached to prospectuses omitted herein]

CAUTIONARY STATEMENT REGARDING FORWARD LOOKING STATEMENTS

This proxy statement/prospectus contains and incorporates by reference forward-looking statements about divine, [the acquired company] and the combined company .... within the meaning of the Securities Litigation Reform Act of 1995. Forward-looking statements include information regarding:

- synergies;
- efficiencies
- cost savings;
- revenue enhancements;
- product integration;
- capital productivity;
- capital spending;
- the timetable for completing the merger; and
- integration of operations.

These statements may be made expressly in this document or may be incorporated by reference to other documents that divine has filed with the SEC. Forward-looking statements may be identified by words such as "anticipates," "believes," "estimates," "expects," "intends," "plans" or similar expressions as they relate to divine, [the acquired company] or their management or by the fact that their truth or accuracy cannot be fully discerned without reference to future events.

We believe that our expectations are based on reasonable assumptions. You should understand, however, that these forward-looking statements are subject to numerous known and unknown risks, uncertainties and contingencies, many of which are beyond divine's, [the acquired company's] and the combined company's control, that may cause actual results, performance or achievements to differ materially from those expressed in, or implied by, our forward-looking statements. These factors include the specific risk factors identified and discussed under the caption "Risk Factors" ..., as well as:

•*economic and industry conditions*—including adverse changes in industry or economic conditions generally or in the markets served by divine, RoweCom, eshare and Open Market, product and labor prices, fluctuations in exchange rates and currency values, capital expenditures requirements and volatility in the stock market;

•*operating factors*—including changes in operating conditions and costs, interest rates and access to capital markets;

•*political and governmental factors*—including political developments and law and regulations and political stability in relevant areas of the world; and

•*competitive factors and technology advances*—including the actions of competitors and the development and use of new technology.

See page 1	You should not place undue reliance on any forward-looking statements. These statements speak only as of the date of this proxy statement/prospectus or, in the case of documents incorporated by reference, the date of the referenced document. The risk factors and cautionary statements contained or referred to in this section should be considered in connection with any subsequent written or oral forward-looking statements that divine, RoweCom or persons acting on either company's behalf may issue. Except as otherwise required by federal securities laws, we undertake no obligation to publicly update or revise any forward-looking statements or the risk factors described in this proxy statement/prospectus, whether as a result of new information, future events, changed circumstances or any other reason after the date of this proxy statement/prospectus. **Ex. 2, p. 45 (RoweCom prospectus), Ex. 3, p. 54 (eShare prospectus), Ex. 4, p. 45 (Eprise prospectus), Ex. 6, p. 49 (Data Return prospectus), Ex. 17, p. iii (Delano prospectus), Ex. 19, p. 47 (Viant prospectus)** **RISK FACTORS** In addition to the other information contained or incorporated by reference in this proxy statement/prospectus, you should carefully consider the following factors in voting on whether to adopt and approve the merger agreement and the merger and, therefore, your related investment in divine common stock. For periods following the merger, we have assumed the consummation of the eshare and Open Market mergers and references to the products, businesses, financial results or financial condition of divine and RoweCom mean our combined enterprise and its subsidiaries, including eshare and Open Market. We have divided the risks into three groups: risks relating to the proposed merger, risks relating to the combined entity, including eshare and Open Market, and risks relating to ownership of divine common stock. References to "we," "us" and "our" in "—Risks Relating to the Proposed Merger" refer to the combined divine/RoweCom entity following completion of the RoweCom merger. References to "we," "us" and "our" in "—Risks Relating to the Combined Entity" and "—Risks Relating to Owning divine Common Stock" refer to the combined divine/RoweCom/eshare/Open Market entity following completion of the mergers. **Ex. 2, p. 25 (RoweCom prospectus)** In addition to the other information contained or incorporated by reference in this joint proxy statement/prospectus, you should carefully consider the following factors in evaluating the proposals to be voted on at your special meeting and the acquisition by the eshare shareholders and Open Market stockholders of divine common stock. For periods following the mergers, we have assumed the consummation of the RoweCom merger. References to the products, businesses, financial results or financial condition of divine, eshare and Open Market mean our combined enterprise and its subsidiaries, including RoweCom. We have separated the risks into three groups: risks relating to the proposed mergers, risks relating to the combined entity and risks relating to ownership of divine common stock. References to "we," "us" and "our" in "—Risks Relating to the Proposed Mergers" refer to the combined divine/eshare/Open Market entity following the completion of the mergers. References to "we," "us" and "our" in "—Risks Relating to the Combined Entity" and "—Risks Relating to Owning divine Common Stock" refer to the combined divine/eshare/Open Market/RoweCom entity following completion of the mergers. **Ex. 3, p. 32 (eShare prospectus)**

See page 1	In addition to the other information contained or incorporated by reference in this proxy statement/prospectus, you should carefully consider the following factors in voting on whether to adopt and approve the merger agreement and the merger and, therefore, your related investment in divine common stock. For periods following the merger, we have assumed the completion of the RoweCom merger and references to the products, businesses, financial results or financial condition of divine and Eprise mean our combined enterprise and its subsidiaries, including RoweCom, as well as eshare and Open Market, the acquisitions of which we recently completed. We have divided the risks into three groups: risks relating to the proposed merger, risks relating to the combined entity, including RoweCom, eshare and Open Market, and risks relating to ownership of divine common stock. References to "we," "us" and "our" in "—Risks Relating to the Proposed Merger" refer to the combined divine/Eprise entity following completion of the Eprise merger. References to "we," "us" and "our" in "—Risks Relating to the Combined Entity" and "—Risks Relating to Owning divine Common Stock" refer to the combined divine/Eprise/RoweCom/eshare/Open Market entity following completion of the merger and the RoweCom merger, and giving effect to our recently completed acquisitions of eshare and Open Market. **Ex. 4, p. 25 (Eprise prospectus)** In addition to the other information contained or incorporated by reference in this proxy statement/prospectus, you should carefully consider the following factors in voting on whether to adopt and approve the merger agreement and the merger and, therefore, your related investment in divine common stock. References to the products, businesses, financial results or financial condition of divine and Data Return mean our combined enterprise and its subsidiaries, including Eprise, eshare, Open Market and RoweCom, each of which we recently acquired. We have divided the risks into three groups: risks relating to the proposed merger; risks relating to the combined entity, including Eprise, RoweCom, eshare and Open Market; and risks relating to ownership of divine common stock. References to "we," "us" and "our" in "—Risks Relating to the Proposed Merger" refer to the combined divine/Data Return entity following completion of the Data Return merger. References to "we," "us" and "our" in "—Risks Relating to the Combined Entity" and "—Risks Relating to Owning divine Common Stock" refer to the combined divine/Data Return/Eprise/RoweCom/eshare/Open Market entity following completion of the merger, and giving effect to our recently completed acquisitions of Eprise, eshare, RoweCom and Open Market. You should also carefully consider the risks and uncertainties associated with Data Return as a stand-alone company described in"Information Regarding Data Return—Management's Discussion and Analysis of Financial Condition and Results of Operations—Risk Factors" beginning on page 135. **Ex. 6, p. 26 (Data Return prospectus)** You should carefully consider the risks and uncertainties described below, and all of the other information included or incorporated by reference in this prospectus. Any of the following risks could materially adversely affect our business, financial condition, or operating results and could negatively impact the value of your investment. **Ex. 17, p. 3 (Delano prospectus)** In addition to the other information contained or incorporated by reference in this proxy statement/prospectus, you should carefully consider the following factors in evaluating the merger proposal to be voted on at the Viant special meeting and the acquisition of divine common stock. References to "we," "us" and "our" refer to the combined divine/Viant entity and its subsidiaries following the completion of the merger. We have separated the risks into three groups: risks relating to the proposed merger, risks relating to the combined entity and risks relating to ownership of divine common stock. **Ex. 19, p. 29 (Viant prospectus)**

See page 1

divine has been in business for only two years, has little operating history and has a new business strategy that may continue to change, which makes it difficult to evaluate its business.

divine was formed in May 1999 and began operations as an Internet holding company engaged in business-to-business e-commerce through a community of associated companies. divine announced a new strategy to focus on enterprise Web solutions in February 2001. Because divine has only recently begun operating under this new business strategy, there is limited data upon which you can evaluate its prospects. As we continue to analyze business plans and internal operations in light of market developments, we may decide to make further substantial changes in our business plan and organization. These changes in business strategy may include moving into areas in which divine has little or no experience. Furthermore, our future business strategy will depend on our ability to successfully acquire and integrate other businesses as we continue to seek to expand our portfolio of products and services. We are, and will remain for the foreseeable future, subject to risks, expenses and uncertainties frequently encountered by young companies, and it will continue to be difficult to evaluate our business and its likelihood of success.

We expect to incur losses for the foreseeable future, and we may never become profitable.

divine incurred net losses of approximately $9,407,000 for the period from inception on May 7, 1999 through December 31, 1999, approximately $470,319,000 for the year ended December 31, 2000, and approximately $104,132,000 for the six months ended June 30, 2001. The majority of these losses were related to the consolidated operations of divine's associated companies and charges divine took to reduce the carrying value of these associated companies. In addition:

- RoweCom incurred net losses of approximately $7,630,000 for the year ended December 31, 1998, $15,067,000 for the year ended December 31, 1999, $83,981,000 for the year ended December 31, 2000 and $16,922,000 for the six months ended June 30, 2001;
- Open Market incurred net losses of approximately $36,970,000 for the year ended December 31, 1998, $19,780,000 for the year ended December 31, 1999, $37,796,000 for the year ended December 31, 2000 and $14,702,000 for the six months ended June 30, 2001; and
- eshare incurred net losses of approximately $9,958,000 for the year ended December 31, 1999, $11,117,000 for the year ended December 31, 2000 and $3,197,000 for the six months ended June 30, 2001.

We expect to incur additional losses for the foreseeable future. Furthermore, we expect our operating expenses to increase significantly as we continue to develop the infrastructure necessary to implement our current business strategy and integrate acquired businesses. Changes to our business strategy and product lines may cause us to incur additional expenses. Our financial results will continue to be affected by the operations of divine's existing associated companies, some of which may cease operations in the future if they are unable to generate positive cash flow. To the extent that our revenues do not increase at a sufficient rate, we may not be able to achieve and maintain profitability.

See page 1

Our overall performance and quarterly operating results may fluctuate and will be affected by the revenues generated from RoweCom's, eshare's and Open Market's products and services and RoweCom's need for additional capital.

We expect RoweCom's, eshare's and Open Market's revenues to comprise a significant portion of our revenues for the near future. In particular, we expect RoweCom's revenues to represent a significant portion of our revenues because RoweCom historically has recognized as revenue its cost of the knowledge resources it sells plus the fee retained by RoweCom. Fluctuations in the revenue generated from our offering of RoweCom's knowledge resources, eshare's CIM solutions and Open Market's e-business solutions will likely impact our overall performance, and risks relating to these knowledge resources, CIM solutions and e-business solutions may affect our success as a whole. divine's, RoweCom's, eshare's and Open Market's revenues and results of operations have varied substantially from quarter to quarter. We expect large fluctuations in our future quarterly operating results due to a number of factors, including:

- the success of, and costs associated with, acquisitions, joint ventures or other strategic relationships;
- losses or charges incurred by associated companies that may include significant write-downs, write-offs and impairment charges;
- the level of product and price competition;
- the length of our sales and implementation process;
- the size and timing of individual transactions;
- seasonal trends;
- the mix of products and services sold;
- software defects and other product quality problems;
- the timing of new product introductions and enhancements by us or our competitors;
- customer order deferrals in anticipation of enhancements or new products to be offered by us or our competitors;
- changes in foreign currency exchange rates;
- customers' fiscal constraints; and
- general economic conditions.

In addition, RoweCom's revenue flow is seasonal in nature and as a result RoweCom periodically will have to rely on financing from divine or third parties to support its needs for working capital. RoweCom has an established practice of paying some of its publishers 30 to 60 days before receipt of funds from customers. Consequently, RoweCom anticipates making substantial expenditures in the fourth quarter of each year, while receiving the majority of its cash receipts relating to those purchases late in the first quarter of the following year. Given these seasonal cash flow imbalances, if RoweCom has an unexpected demand for liquid capital, or does not have financing available on commercially reasonable terms, or at all, when needed, it could have a material adverse effect on our future results of operations and financial condition.

See page 1	***If we do not successfully implement our acquisition strategy or address the risks associated with the acquisitions, our growth and ability to compete may be impaired.*** Our business strategy includes the acquisition of other businesses that are complementary to ours, including other providers of enterprise software products or professional services. We may not be able to identify suitable acquisition candidates available for sale at reasonable prices, consummate any acquisitions, including the proposed eshare and Open Market mergers, or successfully integrate any acquired businesses, including eshare or Open Market, into our operations. Acquisitions, including the proposed eshare and Open Market mergers, involve a number of special risks and challenges, including: •diversion of management's attention; •assimilation of the operations and personnel of acquired companies; •incorporation of acquired products into existing product lines; •adverse short-term effects on reported operating results; •assumption of the liabilities of acquired companies, including, for example, the potential liability of RoweCom for … the securities class action lawsuits described under "Information Regarding RoweCom—Legal Proceedings" on page 112 …; •possible loss of key employees; and •difficulty of presenting a unified corporate image. If we engage in future acquisitions, we might finance these acquisitions with available cash, the proceeds from possible debt financing or the issuance of additional common or preferred stock, or a combination of the foregoing. We may not be able to arrange adequate financing on acceptable terms. If we consummate one or more significant acquisitions by issuing additional equity securities, the market price of our common stock could decline and our stockholders could suffer significant dilution of their interests in us. Furthermore, sellers may be reluctant to accept divine common stock as consideration at its recent price level and given its historical volatility, in which case, our ability to complete further transactions could be significantly limited. For most of the businesses that we may acquire, we will likely have to record significant goodwill and other intangible assets, and generally accepted accounting principles may require us to recognize substantial amortization charges on the other intangible assets, reducing our future reportable earnings. We will also have to periodically test our goodwill and other intangible assets for impairment. If we determine that the value of the goodwill and/or the intangible assets have been impaired, we will be required to recognize substantial charges that would adversely affect our operating results. In addition, these acquisitions could involve significant non-recurring acquisition-related charges, such as the write-off or write-down of software development costs or other intangible items.

See page 1

Our success is dependent upon the market for Internet services, which, along with the general economy, is experiencing a downturn.

During late 2000 and 2001, the market for Internet services and technology has experienced a significant decline. This decline is at least partly attributable to funding difficulties experienced by many smaller companies and a general economic slowdown. Both developments have caused many of our current and potential clients to cancel, reduce and/or delay some projects. A prolonged economic slowdown or continued uncertainty about the future of the market for Internet services will adversely affect our business and financial results. If demand for our products and services does not improve, increased competition for business may result in significant decreases in the prices we charge for our products and services. The market for our products and services may not improve in a timely manner or to the extent necessary to allow us to achieve and sustain profitability in the near future.

If we cannot cross-sell the products and services of divine, RoweCom, eshare and Open Market to the other companies' customers, we will not achieve one of the expected benefits of the mergers.

After the RoweCom, eshare and Open Market mergers, we intend to offer the products and services of RoweCom, eshare and Open Market to existing divine customers and the customers of each other acquired company, and divine's products to existing RoweCom, eshare and Open Market customers. One company's customers may not have an interest in the other companies' products and services. If we fail to cross-market our products and services, we will not achieve one of the expected benefits of the mergers, and this failure could have a material adverse effect on our business, financial condition and operating results.

The market price of divine common stock may continue to be volatile, which could cause litigation against us …

From divine's initial public offering in July 2000 through September 10, 2001, the price per share of divine common stock has ranged from a high of $12.44 to a low of $0.79. The market price of divine common stock has been, and is likely to continue to be, highly volatile and subject to wide fluctuations due to various factors, many of which are beyond our control, including:

•quarterly variations in operating results;

•volatility in the stock market …; and

* * *

•changes in financial estimates and recommendations by securities analysts.

In addition, there have been large fluctuations in the prices and trading volumes of securities of many technology, Internet and CIM product and related professional service companies. Broad market and industry factors may decrease the market price of our common stock. As a result, eshare shareholders and Open Market stockholders may be unable to resell their shares of divine common stock that they receive in the mergers at or above the prices at which they acquired them. In the past, volatility in the market price of a company's securities has often led to securities class action litigation. Such litigation could result in substantial costs to us and divert our attention and resources, which could harm our business. Declines in the market price of our common stock or failure of the market price to increase could also harm our ability to retain key employees, our access to capital and other aspects of our business. **Ex. 2, pp. 25-44 (RoweCom prospectus), Ex. 3, pp. 32-54 (eShare prospectus), Ex. 4, pp. 25-44 (Eprise prospectus), Ex. 6, pp. 26-48 (Data Return prospectus), Ex. 17, pp. 3-16 (Delano prospectus), Ex. 19; pp. 29-46 (Viant prospectus)**

Within the last year, divine has acquired 29 companies. These include, most recently, publicly traded eshare communications, Open Market and RoweCom, as well as the European operations of the former marchFIRST GmbH, privately held Synchrony Communications and Fracta Networks and the asset purchases of Intira and HostOne. With $176 million in cash and cash equivalents at September 30, we believe we have adequate resources to fund divine and execute its business plan until we achieve our profitability target in the last half of 2002. . . . In less than one year, we have built a more than $700 million pro forma revenue base and positioned ourselves to offer a comprehensive range of extended enterprise solutions. We have acquired 29 companies and are pleased to welcome all or newest team members to the divine family. . . . During the next decade those enterprises seeking success will be deploying extended enterprise solutions. The size of this opportunity is a compelling argument for divine to build through consolidation a dominant technology company in the extended enterprise space. We believe this opportunity dwarfs the Sales Force Automation and Customer Relationship Management initiatives of the last decade. **<u>Complaint</u>, ¶ 42, Ex. 5, pp. 7-8 (divine November 12, 2001 press release).**	**SAFE HARBOR STATEMENT UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995** The statements contained in this news release that are forward-looking are based on current expectations that are subject to a number of uncertainties and risks, and actual results may differ materially. The uncertainties and risks include, but are not limited to: divine's ability to consummate its acquisitions of Eprise and Data Return; divine's ability to successfully implement its acquisition strategy, including its ability to integrate the operations, personnel, products, and technologies of, and address the risks associated with, acquired companies; the overall performance and operating results of acquired companies; divine's limited operating history and new and evolving business strategy; divine's ability to expand its customer base and conditions. For further information about these and other risks, uncertainties, and contingencies, please review the disclosure under the captions "Risk Factors" and "Cautionary Statement Regarding Forward-Looking Statements" in divine's Registration Statement on Form S-4 filed with the SEC on October 30, 2001 and as amended from time to time. You should not place undue reliance on these forward-looking statements, which reflect management's analysis, judgment, belief, or expectation only as of the date hereof. Except as required by federal securities laws, divine undertakes no obligation to publicly revise these forward-looking statements or risks, uncertainties, or contingencies to reflect events or circumstances that arise after the date hereof. **Ex. 5, pp. 7-8**

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Over the past year, divine has made a number of acquisitions and significantly rounded out its offering of products and services to position itself as a leader in the extended enterprise space. Divine's completed transactions have increased the combined organization's annual 2001 revenue base to more than $650 million. Divine is now positioned to deliver extended enterprise solutions to a diversified customer base exceeding 21,600 clients with a focus on Global 5000, high-growth middle market companies, academic and government organizations. * * * During the course of the past year, we have transformed divine from a small, unknown player in the extended enterprise market to a leader in the space. Through our strategic acquisitions we have assembled a powerhouse combination of professional services, software services and managed services. * * * The current consolidation cycle has afforded divine the opportunity to execute a disciplined acquisition strategy enabling us to acquire market-leading technology, significant intellectual property and world-class talent that round out our extended enterprise solutions. . . We are already demonstrating the value of our comprehensive solution approach to the extended enterprise, as many of our customers are now leveraging multiple divine technology offerings and services. Customers tell us that our ability to support them with deep consulting expertise, our own best-of breed technologies and the ability to host and manage these technologies clearly differentiates us in the marketplace. * * * We ended 2001 with $140.7 million in cash and securities and a strong balance sheet. . . . The acquisitions we made this year, as well as our ability to integrate the products, development teams, management and financial systems of the acquired companies position divine for achieving its profitability goal by the fourth quarter of 2002. **<u>Complaint</u>, ¶ 54, Ex. 7, p. 4 (divine March 7, 2002 press release)**	This is a non-actionable statement of puffery. ***See*** **Memorandum, Part IV, pp. 20-22.**

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Now, we believe that divine is extraordinarily well positioned to become the emerging company; perhaps the dominant player in this extended enterprise space. We feel we will have to contest this with many of the existing players, but we have also found that, in this economic climate with the kind of lack liquidity that is in the marketplace, it has been less likely that we will have as robust a set of competitors from the venture-backed community, simply because that money – that liquidity has dried up. And we feel that, although there are plenty of competitors there, and certainly many of the established players stretching, divine has positioned itself extremely well. * * * Delano not only had the technology, but they had a good balance sheet. Delano is a company in a -- in a position where the last two quarters were very near breakeven. We believe that the cost savings of the combination could probably accelerate the path to profitability. If we can maintain the top line, or grow the top line through the geographic distribution that we have and the worldwide capabilities that were not there with Delano, obviously, we would accelerate tremendously the profitability of this unit of divine. * * * One of the things that I would like to emphasize is that this is a segment, that by itself, is probably a two or $3-billion segment in the very near future if you listen to the various industry analysts. It's very, very significant. That, added to the multi-billion-dollar opportunity that we have at divine, generally, I think you can why we are as excited about this as we are, a company that is near profitability, and for the last two quarters, have basically been there; a company in which we can save some costs in the combination; a company in which we can accelerate the entrance into the marketplace; a company with a good balance sheet that brings cash to the table combined with the cash that divine has, which we have in our recent conference call indicated that at the end of the year we had $140 million. We have the ability to take this company and move it through the rest of this year into the profitability, and certainly the cash-flow-positive sector that we believe we will achieve in the second half of this fiscal year. So we believe we have combined a huge and very strong balance sheet. We have a great distribution capability on a worldwide basis. We have 700 individuals in the sales organization including inside sales, and full-cycle inside sales, telemarketing, as well as the 400 or so people both domestically and internationally in our sales organization. When you add all that together it only accelerates our ability to succeed this year as divine and our ability to be defined as the dominant player in the extended enterprise. **<u>Complaint,</u>¶ 57, Ex. 8, p. 1 (divine March 13, 2002 investor conference call)**	The statements made on this call that are forward looking are based on current expectations and are subject to a number of uncertainties and risks, and actual results may differ materially. For further information about these risks and uncertainties, please review the disclosure under the captions risk factors and special note on forward-looking statements in divine's registration statement on Form F3 filed with the SEC on February 5th, 2002, and its most recent respective forms 10-K and 10-Q, filed with the SEC. **Ex. 8, p. 1**

We expect the revenues of businesses we acquire to comprise a significant portion of our revenues in the future. In particular, we expect the revenues of RoweCom Inc., a provider of knowledge resources which we recently acquired, to represent a significant portion of our revenues because RoweCom historically has recognized as revenue its cost of the knowledge resource it sells plus the fee retained by RoweCom. Fluctuations in the revenues generated from our offering of customer interaction management ("CIM") solutions, content management, knowledge resources, and professional services will likely impact our overall performance, and risks relating to our CIM solutions, content management, knowledge resources, and professional services may affect our success as a whole. . . . Because RoweCom's cash flow is seasonal in nature, RoweCom periodically will have to rely on financing from us or third parties to support its needs for working capital. RoweCom has an established practice of paying publishers 30 to 60 days before receipt of its customers' funds. Consequently, RoweCom anticipates making substantial additional expenditures in the fourth quarter of each year, while receiving the majority of its cash receipts relating to those purchases late in the first quarter of the following year. Given these seasonal cash flow imbalances, if RoweCom has an unexpected demand for liquid capital, or does not have financing available on commercially reasonable terms, or at all, when needed, it could have a material adverse effect on or future results of operations and financial conditions. We have executed a disciplined acquisition strategy enabling us to acquire market-leading technology, significant intellectual property, and world-class talent that round out our extended enterprise solutions. We have acquired companies providing professional services, Web-based technology, and managed services, positioning us to provide comprehensive solutions and a single point of accountability to our customers. **<u>Complaint</u>, ¶¶ 76, 78, Ex. 9, pp. 2, 14-17, 19, 24 (divine 2001 10-K)**	**<u>SPECIAL NOTE ON FORWARD-LOOKING STATEMENTS</u>** This report includes forward-looking statements that reflect our current expectations and projections about our future results, performance, prospects, and opportunities. We have tried to identify these forward-looking statements by using words such as "may," "will," "expect," "anticipate," "believe," "intend," "plan," "estimate," and similar expressions. These forward-looking statements are based on information currently available to us and are subject to a number of risks, uncertainties, and other factors that could cause our actual results, performance, prospects, or opportunities to differ materially from those expressed in, or implied by, these forward-looking statements. These risks, uncertainties, and other factors include: • our ability to become cash flow positive before we deplete our unrestricted cash reserves or become insolvent; • our ability to maintain our Nasdaq National Market listing; • our ability to execute our integrated Web-based software services, professional services, and managed services strategy; • our ability to successfully implement our acquisition strategy, including our ability to integrate the operations, personnel, products, and technologies of, and address the risks associated with, acquired companies; • our ability to develop enterprise Web software and services; • the uncertainty of customer demand for enterprise Web software and services; • our ability to expand our customer base and achieve and maintain profitability; * * * • our ability to efficiently manage our growing operations; • changes in the market for Internet services and the economy in general, including as a result of any additional terrorist attacks or responses to terrorist attacks; * * * See "Item 1. Business—Risk Factors" for a description of these factors. Other matters, including unanticipated events and conditions, also may cause our actual future results to differ materially from these forward-looking statements. We cannot assure you that our expectations will prove to be correct. In addition, all subsequent written and oral forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the cautionary statements mentioned above. You should not place undue reliance on these forward-looking statements. All of these forward-looking statements are based on our expectations as of the date of this report. Except as required by federal securities laws, we do not intend to update or revise any forward-looking statements, whether as a result of new information, future events, or otherwise.

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See page 11	**RISK FACTORS** ***We have been in business for only two years, have little operating history, and have a new business strategy that may continue to change, which makes it difficult to evaluate our business.*** We were formed in May 1999 and began operations as an Internet holding company engaged in business-to-business e-commerce through a community of associated companies. We announced a new strategy to focus on enterprise Web solutions in February 2001. Because we have only recently begun operating under this new business strategy, there is limited data upon which you can evaluate our prospects. As we continue to analyze business plans and internal operations in light of market developments, we may decide to make further substantial changes in our business plan and organization. These changes in business strategy may include moving into areas in which we have little or no experience. Furthermore, our future business strategy will depend on our ability to successfully acquire and integrate other businesses as we continue to seek to expand our portfolio of products and services. We are, and will remain for the foreseeable future, subject to risks, expenses, and uncertainties frequently encountered by young companies, and it will continue to be difficult to evaluate our business and its likelihood of success. ***Our overall performance and quarterly operating results may fluctuate and will be affected by the revenues and expenses generated from the products and services of businesses we acquire and will be affected by fluctuations in the sales of these products and services.*** We expect the revenues of businesses we acquire to comprise a significant portion of our revenues in the future. In particular, we expect the revenues of RoweCom Inc., a provider of knowledge resources which we recently acquired, to represent a significant portion of our revenues because RoweCom historically has recognized as revenue its cost of the knowledge resource it sells plus the fee retained by RoweCom. Fluctuations in the revenues generated from our offering of customer interaction management ("CIM") solutions, content management, knowledge resources, and professional services will likely impact our overall performance, and risks relating to our CIM solutions, content management, knowledge resources, and professional services may affect our success as a whole. Moreover, our revenues and results of operations have varied substantially from quarter to quarter. We expect large fluctuations in our future quarterly operating results due to a number of factors, including:

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- the completion of acquisitions and the increased revenues and expenses associated with the acquired businesses;
- the success of, and costs associated with, acquisitions, joint ventures, or other strategic relationships;
- losses or charges incurred by associated companies that may include significant write-downs, write-offs, and impairment charges;
- the level of product and price competition;
- the length of our sales and implementation processes;
- the size and timing of individual transactions;
- seasonal trends;
- the mix of products and services sold;
- software defects and other product quality problems;
- the timing of new product introductions and enhancements by us and our competitors;
- customer order deferrals in anticipation of enhancements or new products to be offered by us and our competitors;
- changes in foreign currency exchange rates;
- customers' fiscal constraints; and
- general economic conditions.

Because RoweCom's cash flow is seasonal in nature, RoweCom periodically will have to rely on financing from us or third parties to support its needs for working capital. RoweCom has an established practice of paying publishers 30 to 60 days before receipt of its customers' funds. Consequently, RoweCom anticipates making substantial additional expenditures in the fourth quarter of each year, while receiving the majority of its cash receipts relating to those purchases late in the first quarter of the following year. Given these seasonal cash flow imbalances, if RoweCom has an unexpected demand for liquid capital, or does not have financing available on commercially reasonable terms, or at all, when needed, it could have a material adverse effect on our future results of operations and financial condition.

If we do not successfully implement our acquisition strategy or address the risks associated with acquisitions, our growth and ability to compete may be impaired.

Our business strategy includes the acquisition of other businesses that are complementary to ours, including other providers of enterprise software products, professional services, or managed applications. We may not be able to identify suitable acquisition candidates available for sale at reasonable prices, consummate any acquisitions, or successfully integrate any acquired businesses into our operations. Acquisitions, including our recently completed acquisitions of eshare communications, Inc., Open Market, Inc., RoweCom Inc., Eprise Corporation, and Data Return Corporation, and our pending acquisition of Delano Technology Corporation, involve a number of special risks and challenges, including:

See page 11	• diversion of management's attention; • expenses incurred to effect the transactions; • assimilation of the operations and personnel of acquired companies; • inability to eliminate redundant expenses; • incorporation of acquired products into existing product lines; • adverse short-term effects on reported operating results; • assumption of the liabilities of acquired companies; • loss of acquired customers; • adverse reaction by our customers, vendors, and the capital markets if we are unable to consummate announced acquisitions; • possible loss of key employees; and • difficulty of presenting a unified corporate image. If we engage in future acquisitions, we might finance these acquisitions with available cash, the proceeds from possible debt financing, the issuance of additional equity securities (common or preferred stock), or a combination of the foregoing. We may not be able to arrange adequate financing on acceptable terms. If we proceed with one or more significant future acquisitions, we may use a substantial portion of our available cash to consummate the acquisitions. If we consummate one or more significant acquisitions by issuing additional equity securities, the market price of our common stock could decline and stockholders could suffer significant dilution. Furthermore, sellers may be reluctant to accept divine common stock as consideration at its recent price level and given its historical volatility, in which case our ability to complete further acquisitions could be significantly limited. For most of the businesses that we may acquire, we will likely have to record significant goodwill and other intangible assets, and generally accepted accounting principles may require us to recognize substantial amortization charges on the other intangible assets, reducing our future reportable earnings. We also will have to periodically test our goodwill and other intangible assets for impairment. If we determine that the value of the goodwill and/or the intangible assets have been impaired, we will be required to recognize substantial charges that would adversely affect our operating results. In addition, these acquisitions could involve significant non-recurring acquisition-related charges, such as the write-off or write-down of software development costs or other intangible items. * * *

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Our success depends upon the market for Internet services, which, along with the general economy, is experiencing a downturn.

During late 2000 and 2001, and particularly since September 11, 2001, the market for Internet services and technology experienced a significant decline. This decline is at least partly attributable to funding difficulties experienced by many companies, a general economic slowdown, and instability in the financial markets. These developments have caused many of our current and potential customers and clients to cancel, reduce, and/or delay some projects. A prolonged economic slowdown or continued uncertainty about the future of the market for Internet services also will adversely affect our business and financial results. If demand for our products and services does not improve, increased competition for business may result in significant decreases in the prices we charge for our products and services. The market for our products and services may not improve in a timely manner or to the extent necessary to allow us to achieve and sustain profitability or viability in the near future.

* * *

The market price of our common stock may continue to be volatile, which could cause litigation against us and prevent our stockholders from reselling their shares at or above the prices at which they acquired them.

From our initial public offering in July 2000 through the date of this report, the price per share of our common stock has ranged from a high of $12.44 to a low of $0.42. The market price of our common stock has been, and is likely to continue to be, highly volatile and subject to wide fluctuations due to various factors, many of which are beyond our control, including:

- quarterly variations in operating results;
- volatility in the stock market;
- volatility in the general economy, including as a result of any additional terrorist attacks or responses to terrorist attacks;
- changes in interest rates;
- announcements of acquisitions, technological innovations, or new software, services, or products by us or our competitors; and
- changes in financial estimates and recommendations by securities analysts.

In addition, there have been large fluctuations in the prices and trading volumes of securities of many technology, Internet, CRM, and CIM product and related professional-service companies. Broad market and industry factors may decrease the market price of our common stock. As a result, our stockholders may be unable to resell their shares of our common stock at or above the prices at which they were acquired. In the past, volatility in the market price of a company's securities has often led to securities class action litigation. This litigation could result in substantial costs to us and divert our attention and resources, which could harm our business. Declines in the market price of our common stock or failure of the market price to increase could also harm our ability to retain key employees, our access to capital, and other aspects of our business, which also could harm our business.

See page 11	***We have incurred significant losses in the past, and we expect to incur additional losses in the future.*** We incurred net losses of approximately $9,407,000 for the period from inception on May 7, 1999 through December 31, 1999, aproximately $470,319,000 for the year ended December 31, 2000, and approximately $369,824,000 for the year ended December 31, 2001. The majority of these losses in 1999 and 2000 were related to the consolidated operations of our associated companies and charges we took to reduce the carrying values of these associated companies. The majority of our loss in 2001, however, was related to the operation of our business and our operation of businesses we have acquired. We expect to incur additional losses for at least the next year. In addition, changes to our business strategy, operating plans, and product lines, and any restructuring activity, may cause us to incur additional expenses. Our financial results also will be affected by our operation of businesses that we may acquire in the future, some of which may have incurred substantial losses. Our operating plan depends on us achieving significant increases in revenue and cash receipts and significant decreases in expenses. There is a substantial risk, however, that our revenue and cash receipts will not grow at a sufficient rate, and that we will not be able to reduce our expenses to keep them in line with our revenue. If we are unable to meet our revenue and expense management goals, we will need to significantly reduce our workforce, sell certain of our assets, enter into strategic relationships or business combinations, discontinue some or all of our operations, or take other similar restructuring actions. While we expect that these actions would result in a reduction of recurring costs, they also may result in a reduction of recurring revenues and cash receipts. It is also likely that we would incur substantial non-recurring costs to implement one or more of these restructuring actions. ***Our liquidity is limited.*** We have never generated positive cash flows from operations. Our current liquidity and capital resources are limited. To succeed, we must in the near term reduce our rate of cash consumption and improve our cash position. See "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources." ***Our stockholders may be significantly diluted.*** We are exploring a number of alternatives to generate cash, including acquiring other entities that have substantial cash balances, selling certain assets, and new debt or equity financings. We do not currently have in place any agreements to provide us any of these sources of funds, and these sources of funds may not be available to us on favorable terms, if they are available to us at all. In addition, any of these transactions also could result in significant equity dilution to the holders of our common stock at the time of the transaction, or later. See "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources." **Ex. 9, pp. 14-17, 19, 24**

The first quarter was an exciting one for divine as we closed 14 million-dollar plus deals, compared with ten in the fourth quarter of 2001. In addition, an increasing number of customers bought multiple divine products and services, further validating our cross-sell strategy. We are particularly pleased by the strength of our international operations, which represented 30 percent of revenue during the quarter. At the same time, we have developed the business systems needed to manage our global organization and support profitable growth for the future. * * * We are committed to reducing our cash burn and to achieving profitability by the fourth quarter. To that end, we eliminated approximately $45 million in annual expenses late in the first quarter and early in the second quarter. **<u>Complaint</u>, ¶ 86, Ex. 10, p. 3 (divine May 1, 2002 press release)**	This is a non-actionable statement of puffery. ***See*** **Memorandum, Part IV, pp. 20-22.**

So, from a software-booking standpoint, we think we have definitely exceeded what our competitors have been doing with the growth rate. We are also up on a quarter-over quarter basis, if all the deals, you know we have a fourth quarter on, on quarter four of 01, we would have been up 6.5 percent. And, again I think our competitors suffered on a quarterly standpoint as well. So, software we are looking very strong. I think the importance is that we feel that we are on the exact plan that we have relayed to the street and to the folks since about a period of time, coincident with about the fourth quarter of 2001. We in our prior conference calls have projected that we would be approximately where we are today. I think the revenues as well as the cash position is identical to what we have forecasted. And, we believe that we have made the necessary progress to achieve our objectives for third and fourth quarter of this year. Even though we are only providing guidance for the second at this time. We believe that market place is very difficult and yet that difficult market place is in the calculation and in the factoring of the way that we are running our business. We have taken, as what we believe is some very positive steps and making sure that the expenses proceed down the path, that they are and culminate in a profitable fourth quarter. We believe that we are not counting on a significant amount of up tick in our revenue even though we have been growing and that is relatively unique in this market place. When we look at all of the software revenue competitors, their revenues quarter comparison from quarter one of 2001 to quarter one of 2002 average a negative 50 percent, whereas we have been taking market share and growing primarily in areas such as content management where many of our competitors are down anywhere from 80 as a high to 61 percent. In terms of revenue decreases, we have actually increased our revenue and we believe it is because we have been taking significant market share out of the market place. We do have the freshest to newest technology, the best of (inaudible) products and many of the categories including collaboration in our action content, content management and that is reflected and I think the success that we are slowly materializing here in reporting in the first quarter. Mike mentioned the number of multi million dollar transactions, I think all of those have proved positively to Divine not only because of the varied broad base of existing customers that we have, but the cross selling opportunities that we have and in some ways because the extended enterprise space is materializing as a very important space for our customers even in relatively dire economic times. What dollars are being spent are being spent apparently by our customers and reaching out to their customers and making sure that they have is (inaudible) basic customers as well as the opportunity to expand the revenue utilizing the infrastructure currently available in technology world especially the internet. So, from that standpoint we feel that we just accomplished the first quarter that is exactly on plan in terms of the revenue, exactly on plan in terms of the consolidation integration that we are going through. And, we believe it is exactly on plan in terms of the cash balances that we have. **<u>Complaint</u>, ¶ 88, Ex. 11, pp. 1-2 (divine May 1, 2002, investor conference call)**	The statements made on this call that are forward looking and are based on current expectations and are subject to a number of uncertainties and risks, and actual results may differ materially. For further information about these and other risks and uncertainties and other contingencies, please review the disclosure under the captions Risk Factors and Special Note on Forward-looking Statements in divine's most recent form 10-K and 10-Q filed with the SEC. You should not place undue reliance on the forward looking statements which reflects management announces, judgement, belief or expectations only as of today. Except as required as Federal Security Laws, divine undertakes no obligation to publicly revise forward looking statements or risks, uncertainties or contingencies that are reflected (inaudible) that arise after today. **Ex. 11, pp. 1-2**

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"We have made significant progress in executing our business plan during the past year, aggressively building out our extended enterprise offerings through organic growth and acquisitions while working diligently to eliminate excess costs as we strive to reach profitability by the end of the year" **<u>Complaint</u>, ¶ 93, Ex. 12, p. 1 (divine May 23, 2002, press release)**	This is a non-actionable statement of puffery. ***See* Memorandum, Part IV, pp. 20-22.**
Oak Investment Partners and other investors have agreed to purchase over $61 million of preferred divine stock, which is convertible into common stock at a conversion price of $6 per share. . . . Assuming the conversion of the convertible preferred stock and warrants into divine common stock and the completion of divine's one-for-twenty-five reverse stock split, the investors will acquire approximately 3,823,000 divine common shares in the first purchase, up to approximately 6,333,000 shares in the second purchase, and will have the right to purchase 1,583,000 shares by exercising the warrant. . . . "We have committed all along to reducing our cash burn by reducing overhead associated with our acquisitions and through ongoing expense reductions. As a result of these actions, we will have eliminated approximately $85 million in additional annual expenses by the second quarter, representing a significant step toward achieving profitability by the fourth quarter," said Chief Financial Officer Michael Cullinane. "We believe that, with the cash received in this investment combined with the cash we anticipate receiving at the close of our acquisitions of Viant Corporation and Delano Technology, we will have in excess of $180 million in cash in July. This level of cash reserves is well above our operational requirements but required in this market to assure customers. **<u>Complaint</u>, ¶ 96, Ex. 13, pp. 1-2 (divine May 30, 2002, press release)**	**SAFE HARBOR STATEMENT UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995** The statements contained in this news release that are forward-looking are based on current expectations that are subject to a number of uncertainties and risks, and actual results may differ materially. The uncertainties and risks include, but are not limited to: divine's ability to execute its integrated Web-based technology, professional services, and managed applications strategy; divine's ability to successfully implement its acquisition strategy, including its ability to integrate the operations, personnel, products, and technologies of, and address the risks associated with, acquired companies; divine's ability to develop enterprise Web software and services; the uncertainty of customer demand for enterprise Web software and services; divine's ability to expand its customer base and achieve and maintain profitability; divine's ability to retain key personnel; divine's ability to predict revenues from project-based engagements; divine's ability to keep pace with technological developments and industry requirements; divine's ability to efficiently manage its growing operations; changes in the market for Internet services and the economy in general, including as a result of any additional terrorist attacks or responses to terrorist attacks; increasing competition from other providers of software solutions and professional services; the extent to which customers want to purchase software applications under hosted subscription based models; divine's ability to address the risks associated with international operations; divine's ability to become cash flow positive before it depletes its cash reserves or becomes insolvent; divine's ability to maintain its Nasdaq listing; and other unanticipated events and conditions. For further information about these and other risks, uncertainties, and contingencies, please review the disclosure under the captions "Risk Factors" and "Special Note on Forward-Looking Statements" in divine's most recent Forms 10-K and 10-Q filed with the SEC. You should not place undue reliance on these forward-looking statements, which reflect management's analysis, judgment, belief, or expectation only as of the date hereof. Except as required by federal securities laws, divine undertakes no obligation to publicly revise these forward-looking statements or risks, uncertainties, or contingencies to reflect events or circumstances that arise after the date hereof. **Ex. 13, pp. 1-2**

Under the modified investment agreement with divine, Oak Investment Partners and other investors will complete the previously announced second closing of $38.6 million in convertible referred stock of divine at an effective conversion price equal to the volume weighted average price for the 10-day trading period ending on the third trading day prior to the date that divine's stockholders approve the transaction, which is expected to be on or about August 5. The conversion price will be no less than $1.50 per share of divine common stock and no greater than $5 per share. * * * "divine continued to make progress during the second quarter toward our goal of achieving operating profitability by year-end, increasing top-line revenue, while controlling spending" **<u>Complaint</u>, ¶ 98, Ex. 14, pp. 1-2 (divine July 17, 2002, press release)**	This is a non-actionable statement of puffery. ***See*** **Memorandum, Part IV, pp. 20-22.**

divine continued to gain traction in the extended enterprise market during the second quarter, demonstrating growth in both its revenue and customer base. The company reduced its quarterly operating loss by $20.0 million from the first quarter to the second quarter, and expects to continue to significantly reduce its operating losses over the next two quarters. * * * divine is on track to generate revenue of more than $650 million this year with a global customer base of over 20,000 customers. As the economy improves, we believe divine is well positioned for strong growth and to solidify our leadership in the extended enterprise space. **<u>Complaint</u>, ¶ 102, Ex. 15, p. 1 (divine July 30, 2002 press release)**	**SAFE HARBOR STATEMENT UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995** The statements contained in this news release that are forward-looking are based on current expectations that are subject to a number of uncertainties and risks, and actual results may differ materially. The uncertainties and risks include, but are not limited to: divine's ability to execute its integrated Web-based technology, professional services, and managed applications strategy; divine's ability to successfully implement its acquisition strategy, including its ability to integrate the operations, personnel, products, and technologies of, and address the risks associated with, acquired companies; divine's ability to develop enterprise Web software and services; the uncertainty of customer demand for enterprise Web software and services; divine's ability to expand its customer base and achieve and maintain profitability; divine's ability to retain key personnel; divine's ability to predict revenues from project-based engagements; divine's ability to keep pace with technological developments and industry requirements; divine's ability to efficiently manage its growing operations; changes in the market for Internet services and the economy in general, including as a result of any additional terrorist attacks or responses to terrorist attacks; increasing competition from other providers of software solutions and professional services; the extent to which customers want to purchase software applications under hosted subscription based models; divine's ability to address the risks associated with international operations; divine's ability to become cash flow positive before it depletes its cash reserves or becomes insolvent; divine's ability to maintain its Nasdaq listing; and other unanticipated events and conditions. For further information about these and other risks, uncertainties, and contingencies, please review the disclosure under the caption "Risk Factors" in divine's most recently filed Form 10-K, and under the caption "Special Note on Forward-Looking Statements" in divine's most recent Forms 10-K and 10-Q filed with the SEC. You should not place undue reliance on these forward-looking statements, which reflect management's analysis, judgment, belief, or expectation only as of the date hereof. Except as required by federal securities laws, divine undertakes no obligation to publicly revise these forward-looking statements or risks, uncertainties, or contingencies to reflect events or circumstances that arise after the date hereof. **Ex. 15, p. 4**
The interesting thing to note in this is that in virtually everyone of our businesses, consulting, software and managed services, we had a sequential increase in revenue. * * * So that being said, I suppose I could conclude by saying that in a horrific environment Divine is standing out as one of the only companies capable of growing its revenue, and one of the only companies that I can foresee being able to achieve profitability within the context of a very, very significant new marketplace via extended enterprise. And I believe that somewhere down the road we will emerge as the dominant player in a space that will be very coveted. **<u>Complaint</u>, ¶ 104, Ex. 16, p. 4 (divine July 30, 2002, earnings conference call)**	The statements that are made on this call are forward-looking and are based on current expectations that are subject to a number of uncertainties and risks. And actual results may differ materially. For further information about these and other risks, uncertainties and contingencies please review the disclosure under the captioned risk factors in our most recent Form 10-K filed with the SEC and with special note on forward-looking statements in divine's most recent Forms 10-K and 10-Q filed with the SEC. You should not place undue reliance on these forward-looking statements which reflect management's analysis, judgment, belief, or expectation only as of today. As is required by Federal Securities Law, divine undertakes no obligation to publicly revise these forward-looking statements or risks, uncertainties, or contingencies to reflect events or circumstances that arise after today. **Ex. 16, p. 1**

During April, May and June 2002, we used net cash of $4,590,000 million, $15,128,000 million, and $5,154,000 million, respectively. These amounts are exclusive of an increase of $22,941,000 from the private placement of our Series B convertible preferred stock and a decrease of $23,630,000 principally from payoffs of our RoweCom debt obligations of $15,350,000 and a payment to Mr. Szlam of $6,241,000 related to his put option. In addition, our working capital, net of deferred publisher costs and deferred revenue, decreased to $22,865,000 at June 30, 2002 from $55,762,000 at March 31, 2002. . . .

Our operating plan depends on us achieving increases in revenue and cash receipts and decreases in expenses. We intend to decrease our operating costs, primarily through workforce and payroll reductions, as we continue to integrate acquired companies into our operations. Based on these forecasts, we believe that our existing unrestricted cash and cash equivalents, accounts receivable, proceeds from the second round of the Oak private placement, and new cash generated from our customers will be sufficient to fund our operations and capital requirements. . . .

<u>Complaint</u>, ¶ 112, Ex. 18, pp. 25-28 (divine 10-Q for the three months ending June 30, 2002)

(THIS TEXT <u>IMMEDIATELY</u> FOLLOWS THE FORWARD-LOOKING STATEMENT)

There is a substantial risk, however, that our revenue and cash receipts will not grow at a sufficient rate, and that we will not be able to reduce our expenses to keep them in line with our revenue. If we are unable to meet our revenue and expense management goals or close the Oak private placement, we will need to significantly reduce our workforce, sell certain of our assets, enter into strategic relationships or business combinations, discontinue some or all of our operations, or take other similar restructuring actions. While we expect that these actions would result in a reduction of recurring costs, they also may result in a reduction of recurring revenues and cash receipts. It is also likely that we would incur substantial non-recurring costs to implement one or more of these restructuring actions.

SPECIAL NOTE ON FORWARD-LOOKING STATEMENTS

This report includes forward-looking statements that reflect our current expectations and projections about our future results, performance, prospects, and opportunities. We have tried to identify these forward-looking statements by using words such as "may," "will," "expect," "anticipate," "believe," "intend," "plan," "estimate," and similar expressions. These forward-looking statements are based on information currently available to us and are subject to a number of risks, uncertainties, and other factors that could cause our actual results, performance, prospects, or opportunities to differ materially from those expressed in, or implied by, these forward-looking statements. These risks, uncertainties, and other factors include:

- our ability to become cash flow positive before we deplete our unrestricted cash reserves or become insolvent;
- our ability to maintain our Nasdaq National Market listing;
- our ability to execute our integrated Web-based software services, professional services, and managed services strategy;
- our ability to successfully implement our acquisition strategy, including our ability to integrate the operations, personnel, products, and technologies of, and address the risks associated with, acquired companies;

* * *

- the uncertainty of customer demand for enterprise Web software and services;
- our ability to expand our customer base and achieve and maintain profitability;

* * *

- our ability to efficiently manage our growing operations; changes in the market for Internet services and the economy in general . . .;

Other matters, including unanticipated events and conditions, also may cause our actual future results to differ materially from these forward-looking statements. We cannot assure you that our expectations will prove to be correct. In addition, all subsequent written and oral forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the cautionary statements mentioned above. You should not place undue reliance on these forward-looking statements. All of these forward-looking statements are based on our expectations as of the date of this report. We do not intend to update or revise any forward-looking statements, whether as a result of new information, future events, or otherwise. **Ex. 18, pp. 25-28**

"This investment by Oak, as well as our ability to achieve organic revenue growth quarter over quarter during this challenging economic climate, underscores the market demand for our solutions that support companies' extended enterprise initiatives," said divine Chairman and Chief Executive Officer Andrew "Flip" Filipowski. "With the momentum we are seeing in the market place and the additional financial resources that this investment provides, we believe we have the right mix of offerings and the solid financial footing to achieve our business and financial goals." **<u>Complaint</u>, ¶ 115, Ex. 20, pp. 1-2 (divine August 28, 2002, press release)**	**SAFE HARBOR STATEMENT UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995** The statements contained in this news release that are forward-looking are based on current expectations that are subject to a number of uncertainties and risks, and actual results may differ materially. The uncertainties and risks include, but are not limited to: divine's ability to execute its integrated Web-based technology, professional services, and managed applications strategy; divine's ability to successfully implement its acquisition strategy, including its ability to integrate the operations, personnel, products, and technologies of, and address the risks associated with, acquired companies; divine's ability to develop enterprise Web software and services; the uncertainty of customer demand for enterprise Web software and services; divine's ability to expand its customer base and achieve and maintain profitability; divine's ability to retain key personnel; divine's ability to predict revenues from project-based engagements; divine's ability to keep pace with technological developments and industry requirements; divine's ability to efficiently manage its growing operations; changes in the market for Internet services and the economy in general, including as a result of any additional terrorist attacks or responses to terrorist attacks; increasing competition from other providers of software solutions and professional services; the extent to which customers want to purchase software applications under hosted subscription based models; divine's ability to address the risks associated with international operations; divine's ability to become cash flow positive before it depletes its cash reserves or becomes insolvent; divine's ability to maintain its Nasdaq listing; and other unanticipated events and conditions. For further information about these and other risks, uncertainties, and contingencies, please review the disclosure under the captions "Risk Factors" and "Special Note on Forward-Looking Statements" in divine's most recent Forms 10-K and 10-Q filed with the SEC. You should not place undue reliance on these forward-looking statements, which reflect management's analysis, judgment, belief, or expectation only as of the date hereof. Except as required by federal securities laws, divine undertakes no obligation to publicly revise these forward-looking statements or risks, uncertainties, or contingencies to reflect events or circumstances that arise after the date hereof. **Ex. 20, pp. 1-2**

We at divine are very proud to be recognized among the fastest growing technology companies in North America.... We identified early on the market need for solutions that help companies better interact and collaborate through their value chain, and attribute our rapid growth to our ability to acquire, interact and grow the leading technologies and services that enable Extended Enterprise solutions and serve our 20,000-plus customer base. We expect to see growing demand for our solutions as companies embrace Extended Enterprise strategies that demonstrate a real impact on the bottom line. **<u>Complaint</u>, ¶ 118, Ex. 21, p.1 (divine October 17, 2002, press release)**	This is a non-actionable statement of puffery. ***See* Memorandum, Part IV, pp. 20-22.**

We closed ten deals valued at $1 million or more, and had numerous competitive successes around the world. In addition, we made further progress integrating our portfolio of products, as well as selling multiple solutions to our customers. . . . As a result, we believe divine is well-positioned for profitable growth as we advance our leadership in the Extended Enterprise space." **<u>Complaint</u>, ¶ 121, Ex. 22, p. 4 (divine November 7, 2002, press release)**	**SAFE HARBOR STATEMENT UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995** The statements contained in this news release that are forward-looking are based on current expectations that are subject to a number of uncertainties and risks, and actual results may differ materially. The uncertainties and risks include, but are not limited to: divine's ability to execute its integrated Web-based technology, professional services, and managed applications strategy; divine's ability to successfully implement its acquisition strategy, including its ability to integrate the operations, personnel, products, and technologies of, and address the risks associated with, acquired companies; divine's ability to develop enterprise Web software and services; the uncertainty of customer demand for enterprise Web software and services; divine's ability to expand its customer base and achieve and maintain profitability; divine's ability to retain key personnel; divine's ability to predict revenues from project-based engagements; divine's ability to keep pace with technological developments and industry requirements; divine's ability to efficiently manage its growing operations; changes in the market for Internet services and the economy in general, including as a result of any additional terrorist attacks or responses to terrorist attacks; increasing competition from other providers of software solutions and professional services; the extent to which customers want to purchase software applications under hosted subscription based models; divine's ability to address the risks associated with international operations; divine's ability to become cash flow positive before it depletes its cash reserves or becomes insolvent; divine's ability to maintain its Nasdaq listing; and other unanticipated events and conditions. For further information about these and other risks, uncertainties, and contingencies, please review the disclosure under the caption "Risk Factors" in divine's most recently filed Form 10-K, and under the caption "Special Note on Forward-Looking Statements" in divine's most recent Forms 10-K and 10-Q filed with the SEC. When used in this release and documents referenced, the words "anticipate," "believe," "estimate," "will" and "expect". You should not place undue reliance on these forward-looking statements, which reflect management's analysis, judgment, belief, or expectation only as of the date hereof. divine undertakes no obligation to publicly revise these forward-looking statements or risks, uncertainties, or contingencies to reflect events or circumstances that arise after the date hereof. **Ex. 22, p. 4**

During July, August and September 2002, we used net cash of $4,118,000, $10,710,000, and $12,504,000, respectively. These amounts are exclusive of an increase in $73,844,000, net of issuance costs, from our convertible preferred stock financing and cash acquired through acquisitions, as well as a decrease of $7,540,000 principally related to RoweCom debt paydowns. Our working capital (current assets minus current liabilities), net of deferred publisher costs and deferred revenue, increased from $22,865,000 at June 30, 2002 to $56,509,000 at September 30, 2002. * * * Our operating plan depends on us achieving increases in revenue and cash receipts and decreases in expenses. We intend to decrease our operating costs, primarily through workforce and payroll reductions, as we continue to integrate acquired companies into our operations. Based on our plan forecast, we believe that our existing unrestricted cash and cash equivalents, accounts receivable, and new cash generated from our customers will be sufficient to fund our operations and capital requirements. . . . **<u>Complaint,</u> ¶ 128, Ex. 23, pp. 28-30 (divine 10-Q for three months ending September 30, 2002)**	**(THIS TEXT <u>IMMEDIATELY</u> FOLLOWS THE FORWARD-LOOKING STATEMENT)** There is a substantial risk, however, that our revenue and cash receipts will not grow at a sufficient rate, and that we will not be able to reduce our expenses to keep them in line with our revenue. If we are unable to meet our revenue and expense management goals, we will need to significantly reduce our workforce, enter into business combinations, discontinue some or all of our operations, or take other restructuring actions. While we expect that these actions would result in a reduction of recurring costs, they also may result in a reduction of recurring revenues and cash receipts. It is also likely that we would incur substantial non-recurring costs to implement one or more of these restructuring actions. We are also exploring other alternatives to generate cash, including selling certain assets and obtaining funding through the issuance of new debt, and we may also explore additional equity financings. We do not currently have in place any agreements to provide us any sources of these funds, and these sources of funds may not be available to us on favorable terms, if they are available to us at all. **SPECIAL NOTE ON FORWARD-LOOKING STATEMENTS** This report includes forward-looking statements that reflect our current expectations and projections about our future results, performance, prospects, and opportunities. We have tried to identify these forward-looking statements by using words such as "may," "will," "expect," "anticipate," "believe," "intend," "plan," "estimate," and similar expressions. These forward-looking statements are based on information currently available to us and are subject to a number of risks, uncertainties, and other factors that could cause our actual results, performance, prospects, or opportunities to differ materially from those expressed in, or implied by, these forward-looking statements. These risks, uncertainties, and other factors include: • our ability to become cash flow positive before we deplete our unrestricted cash reserves or become insolvent; • our ability to maintain our Nasdaq National Market listing; • our ability to execute our integrated Web-based software services, professional services, and managed services strategy; • our ability to successfully implement our acquisition strategy, including our ability to integrate the operations, personnel, products, and technologies of, and address the risks associated with, acquired companies; * * * • the uncertainty of customer demand for enterprise Web software and services; • our ability to expand our customer base and achieve and maintain profitability; * * * • our ability to efficiently manage our growing operations; changes in the market for Internet services and the economy in general . . .; Other matters, including unanticipated events and conditions, also may cause our actual future results to differ materially from these forward-looking statements. We cannot assure you that our expectations will prove to be correct. In addition, all subsequent written and oral forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the cautionary statements mentioned above. You should not place undue reliance on these forward-looking statements. All of these forward-looking statements are based on our expectations as of the date of this report. We do not intend to update or revise any forward-looking statements, whether as a result of new information, future events, or otherwise. **Ex. 23, pp. 28-30**

"divine's solutions represent a unique blend of capabilities that help our customers create more meaningful connections with their customers, employees, partners and markets. Our evolving organizational model reflects the progress we have made in the last year at integrating numerous products and services and delivering them as whole solutions to customers through our field delivery team," said divine Chairman and Chief Executive Officer Andrew "Flip" Filipowski, "divine stands out as the only company that brings together unified extended enterprise solutions from a single vendor and, as we move into the new year, this is the perfect time to take the natural next step in creating integrated solutions from all of our intellectual property, streamlining our organization to reflect the solutions we are already delivering to the market, and doing it profitably." * * * The organizational alignment into solution areas enables divine to streamline the company's management and organizational structure as previously discussed in recent earnings announcements. divine has significantly reduced expenses through ongoing integration and consolidation efforts, and this move to solution areas is expected to eliminate more than $100 million in annual expenses, delivering on the 2003 financial commitments made during previous earnings announcements. "We have always set aggressive targets for reducing our operational cost structure and cash burn as part of our drive to reach profitability, and this move is a significant step toward achieving those financial goals," said divine Chief Financial Officer Michael Cullinane. "This organizational structure allows us to better focus our sales efforts on larger solution deals, while reduce the number of organizational layers and streamline decision-making. As a result, divine will be even more nimble and responsive to market and customer needs." **<u>Complaint</u>, ¶ 133, Ex. 24, p. 2 (divine December 20, 2002, press release)**	**SAFE HARBOR STATEMENT UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995** The statements contained in this news release that are forward-looking are based on current expectations that are subject to a number of uncertainties and risks, and actual results may differ materially. The uncertainties and risks include, but are not limited to: divine's ability to execute its integrated Web-based technology, professional services, and managed applications strategy; divine's ability to successfully implement its acquisition strategy, including its ability to integrate the operations, personnel, products, and technologies of, and address the risks associated with, acquired companies; divine's ability to develop enterprise Web software and services; the uncertainty of customer demand for enterprise Web software and services; divine's ability to expand its customer base and achieve and maintain profitability; divine's ability to retain key personnel; divine's ability to predict revenues from project-based engagements; divine's ability to keep pace with technological developments and industry requirements; divine's ability to efficiently manage its growing operations; changes in the market for Internet services and the economy in general, including as a result of any additional terrorist attacks or responses to terrorist attacks; increasing competition from other providers of software solutions and professional services; the extent to which customers want to purchase software applications under hosted subscription based models; divine's ability to address the risks associated with international operations; divine's ability to become cash flow positive before it depletes its cash reserves or becomes insolvent; divine's ability to maintain its Nasdaq listing; and other unanticipated events and conditions. For further information about these and other risks, uncertainties, and contingencies, please review the disclosure under the caption "Risk Factors" in divine's most recently filed Form 10-K, and under the caption "Special Note on Forward-Looking Statements" in divine's most recent Forms 10-K and 10-Q filed with the SEC. When used in this release and documents referenced, the words "anticipate," "believe," "estimate," "will" and "expect". You should not place undue reliance on these forward-looking statements, which reflect management's analysis, judgment, belief, or expectation only as of the date hereof. divine undertakes no obligation to publicly revise these forward-looking statements or risks, uncertainties, or contingencies to reflect events or circumstances that arise after the date hereof. **Ex. 24, p. 2**